

12-14

NO. 1999-23089

1/10

ENTERED *Brunn*
VERIFIED

JOHN DOE I, JOHN DOE II, JOHN DOE III,
and JANE DOE I,

Plaintiffs,

V.

ROMAN CATHOLIC DIOCESE OF
GALVESTON/HOUSTON, by and through
JOSEPH FIORENZA, His Predecessors and
Successors, as Bishop of the ROMAN CATHOLIC
DIOCESE OF GALVESTON/HOUSTON, and
REVEREND DENNIS PETERSON,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

FILED
CHARLES BACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS

99 JUL 23 AM 11:18

280th JUDICIAL DISTRICT

BY MAIL PROCESS

PLAINTIFFS' FIRST AMENDED PETITION

TO THE HONORABLE COURT:

John Doe I, John Doe II, John Doe III and Jane Doe I, Plaintiffs, file this First Amended Petition, complaining of Defendants Reverend Dennis Peterson, hereinafter referred to as "Peterson" and the Roman Catholic Diocese of Galveston/Houston, hereinafter referred to as "Diocese", by and through Joseph Fiorenza, his predecessors and successors, as Bishop of the Roman Catholic Diocese of Galveston/Houston, and state the following:

I.

DISCOVERY CONTROL PLAN

Plaintiffs affirmatively plead that they seek monetary relief aggregating more than \$50,000, and request the Court enter a Discovery Control Plan and place this case in Track III.

II.

PARTIES

1. Plaintiff John Doe I resides in Harris County, Texas. He is an adult male whose identity has been made known to Defendants under separate cover. Plaintiff Doe I was a minor when the sexual abuse and all sexual exploitation, and other negligent acts alleged herein began.

2. Plaintiff John Doe II resides in Harris County, Texas. He is an adult male whose identity has been made known to Defendants under separate cover. Plaintiff Doe II was a minor when the sexual abuse and all sexual exploitation, and other negligent acts alleged herein began.

3. Plaintiff John Doe III resides in Harris County, Texas. He is an adult male whose identity has been made known to Defendants under separate cover. Plaintiff Doe III was a minor when the sexual abuse and all sexual exploitation, and other negligent acts alleged herein began.

4. Plaintiff Jane Doe I resides in Harris County, Texas. She is an adult female whose identity has been made known to Defendants under separate cover. Plaintiff Jane Doe I was a minor when the sexual abuse and all sexual exploitation, and other negligent acts alleged herein began.

5. Defendant Dennis Peterson is a resident of Harris County, Texas, during at least part of the wrongful conduct complained of. Defendant Peterson has appeared and answered as to John Doe I.

6. Defendant Roman Catholic Diocese of Galveston/Houston, by and through Most Reverend Joseph Fiorenza, his predecessors and successors, is an unincorporated religious association. Defendant Diocese has appeared and answered as to John Doe I.

III.

VENUE AND JURISDICTION

Venue is proper in Harris County pursuant to §15.001 *et seq.* of the Texas Civil Practice & Remedies Code because all or part of the cause of action accrued in Harris County, Texas.

Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

IV.

FACTUAL BACKGROUND

JOHN DOE II, III, AND JANE DOE I

1. Plaintiffs John Doe II, John Doe III and Jane Doe I were raised devout Catholics and with their family were active in a Catholic Church in Harris County, Texas. During their youth, Plaintiffs regularly celebrated weekly mass and received the holy sacraments through the Roman Catholic Church. During much of their youth, Defendant Peterson administered these sacraments to Plaintiffs. Plaintiffs and their parents had been taught to believe in and to rely on the teachings of the Catholic Church. Plaintiffs developed great admiration, trust, reverence, respect and obedience to the Catholic Church and to its priests.

2. At all times material herein, Defendant Peterson was under the retention, direct supervision, employ, agency and control of Defendant Diocese.

3. Defendant Peterson used his position and influence as a priest and deacon to gain access to, manipulate, and control John Doe II, John Doe III and Jane Doe I. Defendant Peterson befriended the Plaintiffs as well as their parents and "groomed" the Plaintiffs for his sexual and drug related encounters with them.

4. Defendant Peterson on a consistent basis supplied Plaintiffs with beer, hard alcohol, Valium, and other illegal substances. Defendant Peterson highly encouraged the Plaintiffs to consume these substances, and Defendant Peterson consumed these substances in the presence of the minor Plaintiffs. Defendant Peterson often offered these substances shortly before a sexual encounter would occur.

5. Between approximately 1973 and 1989 Defendant Peterson sexually molested Plaintiffs John Doe II, John Doe III and Jane Doe I during his parish assignments at both St. Benedict and Sacred Heart. This abuse occurred in a multitude of locations including but not limited to the church property, the church rectories, and on trips with Defendant Peterson.

6. Following many incidents of abuse, Plaintiffs attended confession with Defendant Peterson, who absolved Plaintiffs of any sin involving these sexual activities.

7. Prior to this suit being filed, the Defendant Diocese had been informed by sources, including but not limited to its employees, of Defendant Peterson's sexual abuse. Additionally, Plaintiffs informed other priests in the diocese during the time that this substance and sexual abuse was occurring with Defendant Peterson about the abuse and were advised that the problems would be resolved.

JOHN DOE I

8. In approximately 1983, Plaintiff John Doe I and his family were active members of St. Bernadette Catholic Church in Harris County, Texas. Plaintiff John Doe I, a minor, became involved in the Scouting program sponsored by the Catholic Committee on Scouting. During this time Plaintiff John Doe I was repeatedly sexually molested by David Hloop, a lay leader of this Scouting program. Subsequently, Plaintiff John Doe I's behavior changed and his family was encouraged to take him to Defendant Peterson for counseling.

9. At all times material herein, Defendant Peterson was and continues to be a Roman Catholic Priest ordained by Defendant Diocese. At all times material herein, Defendant Peterson remained under the retention, direct supervision, employ, agency and control of Defendant Diocese.

10. In approximately 1987, Defendant Peterson was assigned as pastor of St. Ann's Catholic Church. In that year, Plaintiff John Doe I's parents took him to Defendant Peterson for counseling after the sexual abuse by David Hoop, the scout leader and a member of his home church, St. Bernadette Parish. During this period of time, Defendant Peterson used his position, influence and access as a priest to sexually molest Plaintiff John Doe I. This sexual contact frequently occurred after Defendant Peterson gave the minor Plaintiff John Doe I alcohol and/or drugs.

11. In approximately 1988, Defendant Peterson was transferred to St. Francis Cabrini Catholic Church in Houston, Texas, and while serving as pastor at St. Francis Cabrini Catholic Church in Houston, Texas, Defendant Peterson continued to sexually molest John Doe I. Defendant Peterson also continued to supply him with alcohol and/or drugs, from approximately 1987 through 1997.

12. Plaintiff John Doe I was raised in a devout Roman Catholic family and regularly celebrated weekly mass and received the holy sacraments through the Roman Catholic Church. During much of his youth, Defendant Peterson administered these sacraments to Plaintiff John Doe I. Plaintiff John Doe I and his family had been taught to believe in and to rely on the teachings of the Catholic Church. Plaintiff John Doe I developed great admiration, trust, reverence, respect and obedience to Defendant Peterson and the Catholic Diocese. Following many incidents of abuse, Plaintiff John Doe I attended confession with Defendant Peterson, who absolved Plaintiff John Doe I of any sin involving these sexual activities.

V.

**CAUSES OF ACTION AGAINST DEFENDANT
ROMAN CATHOLIC DIOCESE OF GALVESTON/HOUSTON**

1. At all times material herein from 1973 to present Defendant Peterson was engaged as a deacon or employed as a parish priest by Defendant Diocese and was under Defendant Diocese's direct supervision and control when he gave the minor Plaintiffs alcohol and drugs, and sexually exploited and abused them. Both as a deacon and as an ordained priest, Defendant Peterson acted upon delegated authority of the Roman Catholic Diocese and as an agent for the Bishop of the Diocese. Defendant Peterson came to know Plaintiffs and gained access to them because of his status as a Roman Catholic deacon or priest. Defendant Peterson engaged in this wrongful conduct while in the course and scope of his employment with Defendant Diocese. Therefore, Defendant Diocese is liable for the wrongful conduct of Defendant Peterson. Plaintiffs therefore plead Respondeat Superior, agency, apparent agency and agency by estoppel.

2. Defendant Diocese negligently selected, hired and/or continued the employment of Defendant Peterson in a position of trust, confidence and authority in direct contact with minors when it knew or should have known of his dangerous sexual propensities.

3. Defendant Diocese failed to warn Plaintiffs or their families of Defendant Peterson's dangerous sexual propensities towards minors.

4. Defendant Diocese failed to provide reasonable supervision of Defendant Peterson.

5. Defendant Diocese failed to provide proper training of Defendant Peterson.

6. Defendant Diocese, as a religious organization, is granted special privileges and immunities by society and is in a special fiduciary relationship with Plaintiffs. Defendant Diocese owed the minor Plaintiffs the highest duty of trust and confidence and is required to act in minor Plaintiffs' best interests. Defendant Diocese knowingly violated that relationship. Defendant Diocese knowingly breached the minor Plaintiffs' trust when Defendant Diocese failed to act with the highest degree of trust and confidence to

protect the minor Plaintiffs from Defendant Peterson. This knowing breach of fiduciary duty proximately caused injury to Plaintiffs.

7. Defendant Diocese also knowingly participated in the breach of fiduciary duty committed by Defendant Peterson as to Plaintiffs, and such knowing conduct proximately caused Plaintiffs' injuries.

8. Defendant Diocese was under a duty to disclose the extent of the problem of sexual abuse of children by Roman Catholic clergy and the severe psychological problems that would result from such abuse if not properly treated. Instead Defendant Diocese fraudulently concealed this information allowing Defendant Peterson access to children for his own sexual gratification.

9. Defendant Diocese also committed fraud by misrepresentation that proximately caused Plaintiffs' damages. These misrepresentations included, without limitation, a promise of future performance with an intent not to perform as promised. The Defendant Diocese committed fraud when it represented that Defendant Peterson was a sexually safe, celibate priest when it knew or should have known of his pedophilic tendencies.

10. Defendant Diocese at the time and on the occasions in question acted with heedless and reckless disregard of the safety of Plaintiffs, which disregard was the result of conscious indifference to the rights, welfare and safety of Plaintiffs in violation of the laws of the State of Texas.

11. Plaintiffs allege that Defendant Diocese and others unknown to Plaintiffs, acting in concert, engaged in a plan of action to cover up the incidents of priests' sexual abuse of minors and prevent disclosure, prosecution and civil litigation including, but not limited to, denial of abuse, spoliation of evidence, reassignment of abusive priests, religious duress and coercion, failure to seek out and assist victims, breach of trust and confidence.

12. Plaintiffs allege that Defendant Diocese has acted in concert to fraudulently conceal the extent and nature of priests' sexual abuse and the harmful effects of such abuse.

13. Plaintiffs allege that the actions of Defendants have inflicted emotional distress upon Plaintiffs.

14. Plaintiffs assert that the Roman Catholic Diocese of Galveston/Houston is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct.

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the actor or a third person which is intended to cause harm, even though such conduct is criminal.

Restatement (Second) of Torts, Section 302B.

15. Defendant Diocese realized or should have realized that Defendant Peterson posed an unreasonable risk of harm to minors, including Plaintiffs.

16. Plaintiffs assert that the Roman Catholic Diocese of Galveston/Houston is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm.

- (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results
 - (a) to the other, or
 - (b) to such third persons as the actor should expect to be put in peril by the action taken.
- (2) Such negligence may consist of failure to exercise reasonable care
 - (a) in ascertaining the accuracy of the information, or
 - (b) in the manner in which it is communicated.

Restatement (Second) of Torts, Section 311.

17. Plaintiffs assert that the Roman Catholic Diocese of Galveston/Houston is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 317, under the legal doctrine that

imposes a duty upon employers to exercise reasonable care in controlling employees to prevent them from intentionally harming others when:

- a) the servant
 - (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
 - (ii) is using a chattel of the master and
- b) the master
 - (i) knows or has reason to know that he has the ability to control his servant, and
 - (ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts Section 317 at 125 (1965).

18. Plaintiffs also assert that the Defendants should not be permitted to raise a statutory bar to their claims due to Plaintiffs hereby pleading equitable estoppel, the discovery rule, and a legal disability, all of which tolled the application of the statute of limitations. Plaintiffs, to a reasonable medical certainty, were emotionally disabled to assert their claims against the Defendants until now.

19. Defendant Diocese's failure to ascertain and apprise Plaintiffs and their families of Defendant Peterson's sexually predatory nature and the Defendant Diocese's representation that Defendant Peterson was not sexually dangerous to minors placed Plaintiffs in danger and peril.

20. Defendants are also liable to Plaintiffs for the infliction of emotional distress as a result of their own acts.

21. Plaintiffs assert that all entities and individuals who are named as Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 876, under the legal doctrine of concert of action, as joint venturers, as agents of these entities, under which theories Plaintiffs seek damages from all Defendants jointly and severally.

VI.

CAUSE OF ACTION AGAINST DEFENDANT DENNIS PETERSON

1. Defendant Peterson is a Roman Catholic priest. He had taken a variety of priestly vows, including vows of chastity and celibacy. Notwithstanding these vows, while a deacon and priest, Defendant Peterson repeatedly sexually abused Plaintiffs at his various parish assignments.

2. Defendant Peterson knew of his own dangerous sexual propensities toward minor children.

3. Defendant Peterson has sexually molested or attempted to sexually molest Plaintiffs on numerous occasions from 1973 to 1997.

4. Defendant Peterson made sexual contact with Plaintiffs and thereby assaulted them when he knew or should have reasonably believed that such contact would be provocative and/or offensive to them.

5. Defendant Peterson's sexual abuse resulted in the infliction of emotional distress on Plaintiffs when he engaged in sexual conduct with them.

6. Defendant Peterson violated Sections 21.11, 22.011, 22.041 and 43.25 of the Texas Penal Code when he engaged in the above described sexual conduct with Plaintiffs. Such conduct in these criminal statutes constitute negligence *per se*.

7. Defendant Peterson provided alcoholic beverages to Plaintiffs when they were minors in violation of Section 106.06 of the Texas Alcoholic Beverage Code. Such violation of this statute constitutes negligence *per se*.

8. Defendant Peterson maintained himself in a position of trust, confidence and authority as a deacon and/or parish priest for Plaintiffs and negligently used this trust, confidence and authority to sexually abuse Plaintiffs.

9. Defendant Peterson knowingly breached this fiduciary relationship when he sexually violated Plaintiffs which proximately caused damages to Plaintiffs.

10. Defendant Peterson at the time and on the occasions in question acted with heedless and reckless disregard of the safety of Plaintiffs, which disregard was the result of conscious indifference to the rights, welfare and safety of Plaintiffs in violation of the laws of the State of Texas.

VII.

CLAIMS OF CONSPIRACY

1. All Defendants herein and parties outside the Church entered into a civil conspiracy, accompanied by a meeting of the minds regarding concerted action, the purposes of which were to suppress and minimize public knowledge of the widespread sexual abuse of minors by Catholic Priests and to take a uniform position and approach to the handling of reports of abuse. This uniform position and approach was designed to avoid prosecution of clergy offenders, prevent or minimize claims for damages, avoid public exposure of the sexual abuse of children by Catholic Priests, protect the reputation of the Catholic Church from scandal and thus ensure the continued financial contributions of the Catholic laity. This conspiracy included spoliation of evidence.

2. This conspiracy and concert of action was carried out by Defendants to conceal and fraudulently conceal the fact that Defendants have committed acts of negligence, gross negligence, fraud and breach of fiduciary duty and have engaged in concerted action to commit acts of negligence, gross negligence, fraud and breach of fiduciary duty.

3. In the absence of this conspiracy and concert of action, Defendant Diocese would have responded to repeated notice of the abuse of children by Roman Catholic Priests and issued general and specific warnings to the laity. Had a proper warning been issued, Defendant Peterson would never have had unsupervised access to Plaintiffs and other minors and this sexual abuse and exploitation and other negligent acts would never have occurred. Thus, Defendants' actions in furtherance of this conspiracy are a proximate cause of the injury and damages herein.

4. Defendants engaged in a conspiracy to conceal the sexual abuse of minors, by other Priests, including Priests of the Galveston/Houston Diocese. Defendants advanced the purposes of this conspiracy by failing to study, to disclose and to warn of the dangers of child sexual abuse by Catholic Priests despite notice and knowledge of the risk dating back many decades, and by failing to promulgate proper screening policies to identify potential sex abusers before for admission to the Seminary and for supervision of its priests.

5. Plaintiff alleges that officials of Defendant Diocese, with others as plead herein, engaged in a conspiracy to avoid the prosecution of Defendant Peterson and to cover up the sexual abuse of minors by Defendant Peterson, and many others. The purpose of this conspiracy was to prevent criminal prosecution, avoid adverse publicity, prevent claims for damages by the numerous minor victims, and to avoid exposure of this conspiracy to conceal the claims arising from the crimes of these Priests ordained by Defendant Diocese. Further, officials of the Defendant Diocese, in furtherance of the overall conspiracy alleged, engaged in affirmative acts to conceal the existence of this conspiracy. Further, this conspiracy concealed acts of fraud, breach of fiduciary duty, negligence, and gross negligence.

VIII.

DAMAGES FOR PLAINTIFFS

1. As a result of the conduct and incidents described herein, Plaintiff's have incurred medical counseling and psychiatric expenses in the past which were reasonable and necessary and, in all reasonable probability, such expenses will continue in the future.

2. Plaintiff's have experienced severe psychological pain and suffering in the past and, in all reasonable probability, will sustain severe psychological pain and suffering in the future as a result of their psychological injuries.

3. Plaintiffs have suffered mental anguish in the past and, in all reasonable probability, will sustain mental anguish in the future.

4. Plaintiffs have suffered many other damages including loss of faith in God, and in all reasonable probability their social and professional adjustment in the future will be adversely impacted.

5. Plaintiffs have suffered a diminished wage earning capacity in the past and, in all reasonable probability, will suffer loss of earning capacity in the future.

6. As a result of the above, Plaintiffs seeks damages in excess of the jurisdictional limits of the Court.

7. Plaintiffs also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct taken in heedless and reckless disregard for the safety of Plaintiffs and as a result of Defendants' conscious indifference to the rights, welfare and safety of Plaintiffs in violation of the laws of the State of Texas.

IX.

Pursuant to Rule 194, Texas Rules of Civil Procedure, Defendants are requested to disclose to Plaintiff John Doe II, John Doe III and Jane Doe I within thirty (30) days of service of this request, the information or material described in Rule 194.2 to be produced at The Law Offices of Windle Turley, P.C., 1000 University Tower, 6440 N. Central Expressway, Dallas, Texas 75206, during normal business hours.

X.

PRAYER

Plaintiffs herein claim interest in accordance with Texas Finance Code §304.001 *et seq.* and any other applicable law.

For these reasons, Plaintiffs pray that Defendants be served and cited to appear and answer herein and upon final hearing of this cause, that Plaintiffs have judgment against Defendants, jointly and severally.

pre-judgment and post-judgment interest for damages described herein, for cost of suit, interest as allowable by law and for such other relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

LAW OFFICES OF WINDLE TURLEY, P.C.



Windle Turley

State Bar No. 20304000 ✓

Lori Watson

State Bar No. 00791889

6440 North Central Expressway

1000 University Tower

Dallas, Texas 75206

Telephone No. 214/691-4025

Telecopier No. 214/361-5802

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was provided to all counsel of record via certified mail, return receipt requested, on this the 22 day of July, 1999.

Mr. Joel E. Baird

Vinson & Elkins, L.L.P.

1001 Fannin, Suite 2300

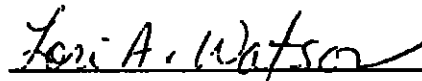
Houston, TX 77002-6760

Mr. David M. Feldman

Feldman & Rogers, L.L.P.

5718 Westheimer, Suite 1200

Houston, TX 77057



Lori A. Watson

MAR-06-00 01:16 PM

BASIC BOOKKEEPING

713 473 3789

P.01

AFFIDAVIT OF JOHN HARMON

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, personally appeared John Harmon, known to me to be the person whose name is subscribed to this instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Upon his oath, John Harmon states that the following is based on his personal knowledge and is true and correct:

- 1 My name is John Harmon, I am over 18 years of age, am competent to testify to the matters stated in this affidavit.
- 2 I have personal knowledge of the facts stated in this affidavit, and all of the facts and matters set forth are true and correct.
- 3 I am the John Doe I Plaintiff in cause number 1999-21089.
- 4 Father Dennis Peterson performed a multitude of sexual acts on me without my consent. I did not understand or appreciate the abusive nature or the resulting damages of these acts to me. As a result of the harmful effects of the sexual acts and drugs and alcohol that Dennis Peterson gave me, which precipitated the use of harder drugs, I was unable to come forward and pursue my legal rights against Dennis Peterson and the Diocese at an earlier date.
- 5 Prior to Dennis Peterson performing sexual acts on me I informed him that David Hoop had sexual contact with me as a minor without my consent. To my knowledge Peterson never reported this abuse to any authorities. I was never contacted by any authorities regarding David Hoop. Dennis Peterson in his deposition refused to answer any questions related to me including when he met me.
- 6 In approximately late February/early March 1999 the Houston Police department, as part of their criminal investigation into sexual abuse allegations of Dennis Peterson instructed me to call Dennis Peterson and record the conversation. I called Dennis Peterson and left a message and he returned my call. At which time I told Dennis Peterson that I needed to speak with him regarding the sexual acts that he performed on me. Dennis Peterson's response to me was "Why do you want to talk to me about that?" This conversation was recorded and was turned over to the Houston Police. My wife was on the other phone listening to this conversation at the time. At no time, during this conversation, did Dennis Peterson ever deny having performed sexual acts on me.

EXHIBIT

tabbies

8

MAR-06-08 01:17 PM

BASIC BOOKKEEPING

713 473 3789

P.02

7 The following actions and statements made by Dennis Peterson on many occasions, starting in approximately 1986 and throughout the years, were factors in my not coming forward earlier to sue Dennis Peterson for his abuse of me.

a) Dennis Peterson told me that I was not to tell anyone about the drugs or alcohol that he was giving me, or about the sexual acts that he performed on me.

b) Peterson also told me that no one would take my word over his, a priest, if I did tell someone about his abuse of me.

c) Peterson pointedly displayed his guns to me, often when abuse was occurring. I knew that Peterson was a constable, and that the guns were very powerful and that he always carried them with him at all times. He made it clear that he would not hesitate to use the guns. I was very intimidated by Peterson's use and possession of these guns in my presence.

d) I believed that Dennis Peterson, as a catholic priest, represented the authority of the catholic church and the will of God.

e) Dennis Peterson had me confess to him regarding all actions between he and myself. He absolved me of any "misconduct" between he and I. He at that point made me believe that anything that I had confessed to did not need to be revealed to anyone else; that God had "taken care of it through the confession."

FURTHER, AFFIANT SAYETH NOT.

John Harmon
John Harmon

SUBSCRIBED AND SWORN TO BEFORE ME, a notary public on this 16th day of

MARCH 2008.

Karel K. Mulcahy
Notary Public in and for the
State of Texas

KARL K. MULCAHY
Printed Name of Notary

My Commission Expires:

10-27-03



TK#13

www.warwick.ac.uk

HARRIS COUNTY, TEXAS

V.

280TH JUDICIAL DISTRICT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the DIOCESE OF GALVESTON-HOUSTON, by and through JOSEPH FIORENZA, His Predecessors and Successors, as Bishop of the DIOCESE OF GALVESTON-HOUSTON (hereinafter the "Diocese"), Defendant in the above-numbered cause and files its Motion for Summary Judgment pursuant to Texas Rules of Civil Procedure 166a (c) and 166a (i). This Motion is based on the pleadings and discovery on file with this Court and the entirety of each of the items contained in the Appendix of Exhibits filed contemporaneously with this Motion, upon which the moving Defendants intend to rely either as filed summary judgment evidence pursuant to Tex. R. Civ. P. 166(a)(c), or as unfiled summary judgment evidence pursuant to Tex. R. Civ. P. 166a(d), as applicable per each Exhibit. The entire Appendix of Exhibits is incorporated in this Motion by reference as a part of this Motion.¹ In support of this Motion, the Diocese would show this Honorable Court as follows:

¹ The depositions in the Appendix of Exhibits are cited in this Motion by exhibit number (Ex.) and the page/line of the relevant testimony (/).

I.

INTRODUCTION

Plaintiffs filed this suit on May 3, 1999, based on acts of misconduct² by Defendant Peterson that they claim occurred when they were teenagers.³ Plaintiffs are now 42, 41, 35, and 27 years old. Three of the Plaintiffs sue for acts that occurred as long ago as the 1970s. One sues for misconduct that occurred in the early 1990's and one act that occurred in 1997, but more than two years before this case was filed. All of these claims are unquestionably barred by the statute of limitations. There are no exceptions that apply to save their claims from this bar. The statute of limitations is designed to prevent precisely the type of misuse of the judicial system that Plaintiffs are attempting in this case. Indeed, last fall a Harris County Grand Jury refused to issue an indictment against Defendant Peterson based on the very same acts as Plaintiffs allege here.

II.

SUMMARY OF RELEVANT DATES

Because these alleged bad acts by Defendant Peterson occurred so long ago, none of the Plaintiffs are able to provide precise dates when any of the alleged acts occurred.⁴ At best, Plaintiffs were only able to provide a range of years the act may have occurred, or an estimate of their age at

²The Diocese vigorously disputes Plaintiffs' contention that Peterson engaged in wrongful conduct with Plaintiffs. However, rather than clutter this Motion with words like "alleged" in reference to these contentions, the Diocese refers to them simply as "conduct," "acts," or the like. By not including "alleged" the Diocese in no way concedes that Plaintiffs contentions are true.

³Plaintiffs John Doe I and John Doe II also claim that some acts of misconduct occurred during their 20's.

⁴For example, when Jane Doe's conflicting testimony on dates was pointed out to her, she said "Well, you're asking dates and a same time. How am I supposed to recollect all that right here? I don't have anything to sit here and calculate." Ex. 4 at 172/6 - 172/15.

the time.⁵ However, even if the outside of Plaintiffs' ranges are used, all of their claims are still barred by limitations.

Jane Doe testified that each of Peterson's acts occurred between 1973 and 1976 when she was 16-19 years old.⁶

John Doe III testified that the single act of sexual misconduct he alleges occurred when Peterson was asked by John Doe III's parents to stay the night at their home when John Doe III was 12 years old (i.e. 1976).⁷ All of the other inappropriate acts John Doe III claims (such as Defendant Peterson giving him "wedgies" and letting him drink alcohol) allegedly took place when John Doe III was 16 or 17 years old, i.e. 1980 or 1981.⁸

John Doe II claims that Peterson's misconduct toward him occurred during two separate time frames. The first time frame was between 1974 and 1975, when he 15-17 years old.⁹ The second time frame was between 1988 and either 1990 or 1991, when he was 30-33 years old.¹⁰

John Doe I testified that the first time he ever saw Defendant Peterson was on one occasion in 1988 (15 years old) when Defendant Peterson met with him at John Doe I father's request to talk to John Doe I about David Hoop, a man who had been sexually molesting John Doe I for several years.¹¹ John Doe I claims that while his father was waiting outside the room, Defendant Peterson

⁵Statutes of limitations were designed to prevent the impairment of the search for truth by relying on time-faded memories such as those in this case.

⁶Ex. 4 at 31/19 - 31/24; 50/7 - 50/9; 53/25 - 54/5; 68/4 - 68/18; 170/7 - 172/15; 166/4 - 168/23.

⁷Ex. 3 at 21/5 - 21/23.

⁸Ex. 3 at 27/17 - 30/17.

⁹Ex. 2 at 60/7 - 60/25; 152/11 - 153/16; 155/14 - 155/19; and 177/6 - 177/17.

¹⁰Ex. 2 at 301/11 - 302/13; 306/21 - 307/1.

¹¹Ex. 1 at 59/21 - 60/2 and 62/3 - 63/3.

asked him if he "was okay down there" and patted him between the legs (through his pants).¹² John Doe I did not see Peterson again until several years later, sometime in the early 1990s, when John Doe I was at least 18 years old.¹³ He claims that Peterson engaged in acts of misconduct from the early 1990s through the fall of 1995.¹⁴ John Doe I moved to Seattle, Washington in late 1995.¹⁵ The next time John Doe I saw Peterson was in March 1997, when he claims the last act occurred.¹⁶

III.

SUMMARY JUDGMENT STANDARD

A defendant is entitled to summary judgment when it disproves as a matter of law one or more essential elements of the plaintiff's cause of action. *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991). Summary judgment is also proper for a defendant when it establishes one or more of its affirmative defenses as a matter of law. *Montgomery v. Kennedy*, 669 S.W.2d 309, 310-311 (Tex. 1984). Summary judgment for a defendant is also proper when the plaintiff has "no evidence" of one or more essential elements of a claim or an issue on which the plaintiff would have the burden of proof at trial. Tex. R. Civ. P. 166a (i).

Once a defendant produces sufficient evidence to demonstrate its right to summary judgment, the plaintiff must set forth sufficient competent evidence to raise a fact issue to avoid a summary judgment. *"Moore" Burger, Inc. v. Phillips Petroleum Co.*, 492 S.W.2d 934, 936-37 (Tex. 1972). Pleadings do not constitute summary judgment evidence. *KPMG Peat Marwick v. Harrison County Housing*, 988 S.W.2d 746, 749-50 (Tex. 1999).

¹²Ex. 1 at 67/23 - 68/24.

¹³John Doe I was born on December 2, 1972. Ex. 1 at 5/3-5/5.

¹⁴Ex. 1 at 444/20 - 445/12; 511/16-511/20; 512/21-513/25; 519/14-519/23

¹⁵Ex. 1 at 428/20 - 429/2

¹⁶Ex. 1 at 29/20 - 30/3.

IV.

PLAINTIFFS' CLAIMS ARE TIME BARRED

A. The Applicable Statute of Limitations

The Texas Supreme Court has explained the purpose of the statute of limitations:

Limitations statutes afford plaintiffs what the legislature deems a reasonable time to present their claims and protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents or otherwise. The purpose of a statute of limitations is to establish a point of repose and to terminate stale claims.

S.V. v. R.V., 933 S.W.2d 1, 3 (Tex. 1996) (citing *Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 (Tex. 1990)). The Court has also recognized that although application of the statute of limitations may in some instances produce what appears to be a harsh result, that in and of itself is not enough to warrant judicial exception to its application:

Statutes of limitations are not directed to the merits of any legislative assessment of the merits of cases in general. The fact that a meritorious claim might thereby be rendered nonassertible is an unfortunate, occasional by-product of the operation of limitations. All statutes of limitations provide some time period during which the cause of action is assertible. However, preclusion of a legal remedy alone is not enough to justify a judicial exception to the statute. The primary purpose of limitations, to prevent litigation of stale or fraudulent claims, must be kept in mind.

Id. at 6 (sexual abuse case based on repressed memory barred by limitations where victim did not file suit within two years of majority).

All of Plaintiffs' claims against the Diocese are negligence-based personal injury claims.¹⁷

Section 16.003 of the Texas Civil Practice and Remedies Code provides that a suit for personal injuries must be filed within two years of the date a cause of action accrues. Tex. Civ. Prac. & Rem. Code § 16.003 (Vernon Supp. 2000). As a general rule, a cause of action accrues "when a wrongful act causes some legal injury, even if the fact of injury is not discovered until later, and even if all resulting damages have not yet occurred." *S.V. v. R.V.*, S.W.2d at 3. In abuse cases, under the "legal injury rule," the cause of action accrues on the date the alleged act of abuse occurred. *Id.* at 8.

When the injured party is a minor, limitations is tolled during the period of minority. Tex. Civ. Prac. & Rem. Code §16.001 (Vernon Supp. 2000). Thus, claims for injuries suffered during minority are considered to accrue on the minor's 18th birthday. *S.V. v. R.V.*, 933 S.W.2d at 8. Once a minor reaches majority, however, they are treated no differently from any other plaintiff and they

¹⁷The only exception is Plaintiffs' claim for "fraud by misrepresentation." Pls. First Am. Pet. at p. 7, ¶ 9. The basis for this claim is that the "Diocese committed fraud when it represented that Defendant Peterson was a sexually safe, celibate priest when it knew or should have known of his pedophillic tendencies." Pls. First Am. Pet. at p. 7, ¶ 9. The statute of limitations for fraud is four years. Tex. Civ. Prac. & Rem. Code 16.004(a)(4) (Vernon Supp. 2000). However, that limitations period does not apply in this case because the underlying fraud claim is not viable. The Diocese made no such representation to Plaintiffs or anyone else. The only possible basis for this claim is that since Peterson is a diocesan priest, the Diocese implicitly made this representation to all parishioners. Such a conclusion would be absurd and would be tantamount to the Diocese being deemed the insurer of its priests. It would also be contrary to the law. Only a material misrepresentation of fact (as opposed to opinion, judgment, or expectation) is actionable. *De Santis v. Wackenhut Corp.*, 732 S.W.2d 29, 38 (Tex. App.-Houston [1st Dist.] 1987), *aff'd in part, rev'd in part on other grounds*, 793 S.W.2d 670 (Tex. 1990), *cert. denied*, 498 U.S. 1048 (1991). Further, an action for fraud cannot be based on statements of religious belief. *Tilton v. Marshall*, 925 S.W.2d 672 (Tex. 1996). Plaintiffs neither have any evidence of any actionable misrepresentation made by the Diocese to Plaintiffs concerning Peterson, nor can they establish the essential elements of fraud. Thus, summary judgment is appropriate for the Diocese on that claim.

Even if this Court applied the four year statute of limitations, it would not impact any claims in this case other than those that accrued between May 3, 1995 and May 13, 1999. Only John Doe 1 has such claims. The Diocese could not have committed fraud as to him in those instances because, taking Plaintiffs claims as true, John Doe 1 was 25 years old at the time and based on his prior involvement with Peterson already knew of Peterson's propensities. Therefore, the essential element of justified reliance is missing and summary judgment for the Diocese is proper on that claim. *Finger v. Morris*, 468 S.W.2d 572, 577 (Tex. Civ. App.-Houston [14th Dist.] 1991, writ ref'd n.r.c.).

have two years to file suit for personal injury. Therefore, persons who suffer an injury during their minority have until their 20th birthday to file suit.

B. The Statute of Limitations Expired Before Plaintiffs Filed Suit

1. John Doe I's claims are barred by limitations

John Doe I was born on December 2, 1972.¹⁸ He is now 27 years old. He claims that Peterson's acts occurred during three separate time frames: 1) one "patting" in 1988, 2) various bad acts from the early 1990s until the fall of 1995., and 3) one act in March 1997. His claims based on the 1988 act must be dismissed because it occurred during his minority and he failed to file suit before his 20th birthday. His claims based on the acts during the second time frame, when John Doe was 18 years or older, must also be dismissed because he failed to file suit within two years of the date of each act of misconduct. Similarly, his claims based on the March 1997 act must also be dismissed because he failed to file suit by March, 1999.¹⁹

2. John Doe II's claims are time-barred

John Doe II was born on October 2, 1958 and is currently 41 years old.²⁰ He claims are based on acts that occurred in two separate time frames: 1) from 1974-1975, and 2) from 1988 - 1990 or 1991. Because John Doe II was a minor when the 1974-1975 acts occurred, he had until his 20th

¹⁸Ex. 1 at 5/3 - 5/5.

¹⁹Furthermore, the acts that fall within the second and third time frame all occurred when John Doe I was an adult-- after several years of no contact at all with Peterson. Sexual contact between adults is not tortious. *Taylor v. Texas Dept. of Public Welfare*, 549 S.W.2d 422, 424 (Tex.Civ.App.--Fort Worth 1977, writ ref'd n.r.e); *Postell v. Texas Dept. of Public Welfare*, 549 S.W.2d 425, 427 (Tex.Civ.App--Fort Worth 1977, writ ref'd n.r.e). Because John Doe I was a consenting adult, his claims are not legally actionable. *Sedonia Contracting, Inc. v. Ford, Powell & Carson, Inc.*, 995 S.W.2d 192, 198 (Tex. Civ. App.--San Antonio 1999, reh. den.); *Smith v. Holley*, 827 S.W.2d 433, 437 (Tex. Civ. App--San Antonio 1992, writ den.). Even if his claims were actionable, no act or omission of the Diocese could have been the proximate cause of any injury that resulted and summary judgment for the Diocese is proper on those claims. *Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 776 (Tex. 1995).

²⁰Ex. 2 at 4/14 - 4/18.

birthday to file suit based on those acts, which was October 2, 1978. He did not file suit until July 22, 1999—almost 21 years too late. Likewise, his claims based on the 1988-1990 or 1991 acts must be dismissed because he failed to file suit within two years.²¹

3. John Doe III's claims are barred

John Doe III was born on June 8, 1964 and is currently 35 years old.²² He claims are based only on acts that occurred when he was a minor. Therefore, he had until his 20th birthday to file suit, which was June 8, 1984. He did not file suit until July 22, 1999—over 15 years too late. Therefore, each of his claims must be dismissed.

4. Jane Doe's claims are barred

Jane Doe was born on June 21, 1957 and is currently 42 years old.²³ Each act Jane Doe claims occurred took place between 1974 and 1976, when she was 17 to 19 years old. For the acts that occurred during her minority, Jane Doe had until her 20th birthday to file suit, which was June 21, 1977. For the acts that occurred when she was an adult, she had two years from the date each act of misconduct occurred to file suit— i.e., 1978 at the very latest. Because Jane Doe did not file suit until July 22, 1999—over 20 years too late— all of her claims must be dismissed.

²¹In addition, the acts that fall within the second time frame all occurred when John Doe II was an adult—over 30 years old. Sexual contact between adults is not tortious. *Taylor*, 549 S.W.2d at 424 ; *Postell* 549 S.W.2d at 427. Because John Doe II was a consenting adult, his claims are not legally actionable. *Sedonia Contracting, Inc. v. Ford, Powell & Carson, Inc.*, 995 S.W.2d 192, 198 (Tex. Civ. App.—San Antonio 1999, reh. den.); *Smith v. Holley*, 827 S.W.2d 433, 437 (Tex. Civ. App.—San Antonio 1992, writ den.). Even if his claims were actionable, no act or omission of the Diocese could have been the proximate cause of any injury that resulted and summary judgment for the Diocese is proper on those claims. *Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 776 (Tex. 1995).

²²Ex. 3 at 5/15 - 5/18.

²³Ex. 4 at 5/15 - 5/17.

C. There Is No Exception to the Application of the Statute of Limitations in this Case

Plaintiffs state in their First Amended Petition that the statute of limitations was tolled by equitable estoppel, the discovery rule, or by a legal disability because “[p]laintiffs, to a reasonable degree of medical certainty, were emotionally disabled to assert their claims against the Defendants until now.” Pls. First Am. Pet. at p.9, ¶18. Statements in a pleading cannot be considered as evidence sufficient to raise a material fact issue to avoid summary judgment. *KPMG Peat Marwick*, 988 S.W.2d at 749-50. None of these technical exceptions effect the statute of limitations bar in this case.

1. Equitable Estoppel Does Not Apply

Equitable estoppel prevents a defendant from relying on the statute of limitations as a defense when the defendant is “under a duty make a disclosure but fraudulently conceals the existence of the cause of action from the party to whom it belongs.” *Wright v. Greenberg*, 2 S.W.3d 666, 674 (Tex.App.–Houston [14th Dist.] 1999, pct. filed). The estoppel ends however, when “the party learns of facts or circumstances that would lead a reasonably prudent person to inquire and thereby discover the concealed cause of action.” *Id.* The Texas Supreme Court has specifically noted that in sexual abuse cases, fraudulent concealment is not possible because the alleged victim is aware of the abusive act. *See S.V. v. R.V.*, S.W.2d at 8 (“R. does not allege fraud or fraudulent concealment, nor could she.”). The same is true here; thus, equitable estoppel does not apply in this case.

2. The Discovery Rule Does Not Apply

The discovery rule is another exception to the “legal injury rule” that defers accrual of a cause of action until the time that a plaintiff discovers, or in the exercise of reasonable diligence should discover, the nature of their injury. *Id.* at 6. For the discovery rule to apply, a plaintiff must prove that the claim was both 1) inherently undiscoverable within the limitations period, and 2) objectively verifiable. *Id.* In this case, Plaintiffs cannot establish either prong. It is not possible that any of

Plaintiffs' claims were inherently undiscoverable because each of the Plaintiffs were aware of the alleged acts at the time they occurred. *See Id.* at 8.

Plaintiffs also cannot satisfy the "objectively verifiable" prong of the discovery rule test. Examples of evidence that may satisfy this requirement are : a confession by the abuser, a criminal conviction, contemporaneous records or written statements of the abuser such as diaries or letters, photographs or recordings of the abuse, medical records of the abused person showing physical injury, and objective eyewitness testimony. *Id.* at 15. Plaintiffs have no such evidence in this case. In fact, there is evidence to the contrary: a no-bill by a Harris County Grand Jury in the face of testimony given by John Doe I and John Doe II. Should Plaintiffs submit a report from an expert in an attempt to establish this prong, the Texas Supreme Court in *Robinson* made clear that expert opinions alone on this topic are insufficient to provide the objective verification necessary for application of the discovery rule. *Robinson v. Weaver*, 550 S.W.2d 18, 21 (Tex. 1977).

The discovery rule is an exception to the legal injury rule that is to be narrowly construed and applied in few cases. *S.V. v. R.V.*, 933 S.W.2d at 23, 25. The Diocese has conclusively negated the application of the discovery rule in this case. Therefore, this case must be dismissed as barred by limitations.

3. "Unsound Mind" Does Not Affect The Limitations Bar In This Case

The Texas Civil Practice and Remedies Code provides that certain disabilities will toll the statute of limitations. Tex. Civ. Prac. & Rem. Code § 16.001 (Vernon Supp. 2000). Among them is "unsound mind." §16.001(a)(2). The "unsound mind" tolling provision serves to protect people who "are unable to participate in, control, or understand the progression and disposition of a lawsuit." *Hurgraves v. ARMCO Foods, Inc.*, 894 S.W.2d 546, 548 (Tex. App—Austin 1995, no writ).

"Unsound mind" is not defined in the statute. Under a former codification of the Probate Code "unsound mind" was defined as: "persons non compose mentis, mentally disabled persons, insane persons, and other persons who are mentally incompetent to care for themselves or manage their property and financial affairs." Tex. Prob. Code §3(y) (Vernon 1980 & Supp. 1995). In 1995 this section was repealed and replaced with section (p), which defines "incapacitated" or "incapacitated persons" as "an adult individual who, because of a physical or mental condition is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs." Generally, "insane" persons are synonymous with person of "unsound mind" *Jones v. Miller*, 964 S.W.2d 159, 164 (Tex. App.—Houston [14th Dist.] 1998, no pct.).

The reported cases where unsound mind has been held to constitute a legal disability and toll the statute of limitations are generally based on the presence of an objective, longstanding cognitive injury or deficit. *See Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 753 (Tex. 1993) (severe and permanent head injury); *Casu v. CBI Na-Con, Inc.*, 881 S.W.2d 32, 34 (Tex.App.—Houston [14th Dist.] 1994, no writ) (chemical accident caused acute psychotic injury); *Pulla v. McDonald*, 877 S.W.2d 472, 477 (Tex.App.—Houston [1st Dist.] 1994, no writ) (permanent brain damage and blindness); *Felan v. Ramos*, 857 S.W.2d 113, 116 (Tex. App.—Corpus Christi 1993, writ denied) (unconscious since date of injury); *Tinkle v. Henderson*, 730 S.W.2d 163, 165 (Tex.App.—Tyler 1987, writ ref'd n.r.e.) (brain damage).

In this case, in order to avoid summary judgment, it is not enough for Plaintiffs to simply raise unsound mind as an issue. *See KPMG Peat Marwick*, 988 S.W.2d at 749-50. In their response to this Motion, Plaintiffs must establish by competent summary judgment evidence that there is a *material fact* question that Plaintiffs were rendered legally disabled by unsound mind. *Id.*

It is clear that the Plaintiffs do not satisfy the Probate Code definition, nor do they have any cognitive injury or deficit as those found in the reported case law on this issue. Plaintiffs simply are not now and have not in the past been legally disabled due to "unsound mind." They were certainly of sufficient mind to contact a lawyer to file this case, to testify in front of a Grand Jury, to give a deposition in this case, and to respond to discovery. Since the time these acts were allegedly committed by Peterson, these Plaintiffs have gotten married, gotten divorced, gotten re-married, had children, bought or rented houses and apartments, signed legal documents, held jobs, voted, provided food and shelter for themselves and their spouse/children, cared for themselves physically, and have done a host of other things that demonstrate the lack of any legal disability. Plaintiffs cannot satisfy their burden to raise a material fact issue to the contrary. The "unsound mind" claim is clearly one concocted by Plaintiffs' counsel solely for the purpose of attempting to circumvent the proper application of the statute of limitations in this case.

WHEREFORE, PREMISES CONSIDERED, the Diocese respectfully request the Court dismiss this case in its entirety against the Diocese and grant it any other such further relief to which they may show itself entitled.

Respectfully submitted,

VINSON & ELKINS L.L.P.

By: Robert M. Schick

Robert M. Schick

State Bar No. 17745715

Joel E. Baird

State Bar No. 00787023

J. Weimer

State Bar No. 24013727

2300 First City Tower

1001 Fannin Street

Houston, Texas 77002-6760

Telephone: (713) 758-4582

Telecopy: (713) 615-5528

**ATTORNEYS FOR DEFENDANT THE
DIOCESE OF GALVESTON-HOUSTON,
by and through JOSEPH FIORENZA,
His Predecessors and Successors, as Bishop of
the DIOCESE OF GALVESTON-HOUSTON**

Unofficial Copy Office of Matthew J. Schick, Clerk

CERTIFICATE OF SERVICE

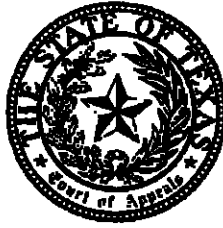
I hereby certify that on this 11 day of February, 2000 a true and correct copy of the foregoing has been forwarded to all counsel either by hand delivery, facsimile, or by placing same in the United States mail, certified, return receipt requested, with proper postage, and addressed to all counsel of record as follows:

Windle Turley
Lori Watson
Law Offices of Windle Turley, P.C.
6440 North Central Expressway
1000 University Tower
Dallas, Texas 75206

David M. Feldman
Feldman & Rogers, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057


Robert M. Schick

Dismissed and Opinion filed November 9, 2000.



In The

Fourteenth Court of Appeals

NO. 14-00-00503-CV

JOHN DOE I, JOHN DOE II, AND JANE DOE, Appellants

V.

ROMAN CATHOLIC DIOCESE OF GALVESTON/HOUSTON, BY AND THROUGH
JOSEPH FIORENZA, HIS PREDECESSORS AND SUCCESSORS, AS BISHOP OF
THE ROMAN CATHOLIC DIOCESE OF GALVESTON/HOUSTON, AND
REVEREND DENNIS PETERSON, Appellees

On Appeal from the 280th District Court
Harris County, Texas
Trial Court Cause No. 99-23089

OPINION

This is an appeal from a judgment signed March 21, 2000.

On November 2, 2000, appellants filed a motion to dismiss the appeal because the case has been settled. See TEX. R. APP. P. 42.1. The motion is granted.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed November 9, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

Do Not Publish. — TEX. R. APP. P. 47.3(b).

FILED
CHARLES BACARISSE
District Clerk
NOV 09 2000
By _____
Harris County, Texas
Deputy

ENTERED

THE STATE OF TEXAS
VS.

DENNIS LEE PETERSON
2730 NELWOOD DRIVE
HOUSTON, TX 77038

MM 01748963-999
SPN: 01748963-999
DOB: WM 10/29/47
DATE PREPARED: 10/7/99

D.A. LOG NUMBER: 547843
CJIS TRACKING NO.:
BY: EEG/SC DA NO: 05167700-
BALDASSANO
AGENCY: HPD
O/R NO: 28122399
ARREST DATE: DIRECT

NCIC CODE: 1115 22

RELATED CASES:

FELONY CHARGE: **SEXUAL ASSAULT**
CAUSE NO: 0826167

HARRIS COUNTY DISTRICT COURT NO: 351st
FIRST SETTING DATE:

no bond
BAIL: \$10,000-
PRIOR CAUSE NO:

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, **DENNIS LEE PETERSON**, hereafter styled the Defendant, heretofore on or about **MARCH 3, 1997**, did then and there unlawfully, intentionally and knowingly cause the sexual organ of John Harmon, hereinafter called the Complainant, to contact and penetrate the mouth of the Defendant, without the consent of the Complainant, namely the Complainant had not consented and the Defendant knew that the Complainant was unconscious and physically unable to resist.

It is further presented that in Harris County, Texas, **DENNIS LEE PETERSON**, hereinafter styled the Defendant, heretofore on or about **MARCH 3, 1997**, did and there unlawfully, intentionally and knowingly cause the sexual organ of John Harmon, hereinafter called the Complainant, to contact and penetrate the mouth of the Defendant without the consent of the Complainant, namely, the Complainant had not consented and the Defendant knew the Complainant was unaware that the sexual assault was occurring.

It is further presented that in Harris County, Texas, **DENNIS LEE PETERSON**, hereinafter styled the Defendant, heretofore on or about **MARCH 3, 1997**, did and there unlawfully, intentionally and knowingly cause the sexual organ of John Harmon, hereinafter called the Complainant, to contact and penetrate the mouth of the Defendant without the consent of the Complainant, namely, the Defendant was a clergyman who caused the Complainant to submit and participate by exploiting the complainant's emotional dependency on the Defendant in the Defendant's professional charter as spiritual adviser.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

FOREMAN OF THE GRAND JURY

INDICTMENT (STATE'S COPY)

DA Lay #547843

No. DIRECT

THE STATE OF TEXAS

vs.

CAUSE NO. 0826167

351st
GJ

10-14

, A. D. 1999

IN DISTRICT COURT
HARRIS COUNTY

DENNIS LEE PETERSON

To Hon. Judge Collins ~~Ellis~~ ELLIS 351st Judge of said court:

The Grand Jury having investigated the case against _____

DENNIS LEE PETERSON

wherein he is charged with the offense of

SEXUAL ASSAULT

and have failed to find a bill of indictment against him, and now ask your honor to have him discharged from custody.

351ST

Billy S Chandler
Foreman of the Grand Jury

To the Sheriff of Harris County:

You are hereby commanded to discharge the said

DENNIS LEE PETERSON

Jessie Collins

Judge.

FILED
CHARLES BACARI
DISTRICT CLERK
HARRIS COUNTY, TEXAS
99 OCT 14 PM 2:44
BY [Signature] DEPUTY

Vol 226 Page 33 AXGM